



Health Professions Review Board

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DECISION NO. 2012-HPA-074(a)

In the matter of an application under section 50.6 of the *Health Professions Act*, R.S.B.C. 1996, c. 183, as amended, (the “Act”) for review of a complaint disposition made by an inquiry committee

BETWEEN:	The Complainant	COMPLAINANT
AND:	The College of Physicians and Surgeons of BC	COLLEGE
AND:	A Physician	REGISTRANT
BEFORE:	David Hobbs, Panel Chair	REVIEW BOARD
DATE:	Conducted by way of written submissions concluding on July 09, 2012	
APPEARING:	For the Complainant: Self-represented	
	For the College:	Sarah Hellmann, Legal Counsel
	For the Registrant:	Self-represented

PRELIMINARY APPLICATION FOR SUMMARY DISMISSAL

I INTRODUCTION

[1] The College brings an application for summary dismissal of the Complainant's application for review of the College's decision to take no further action on the complaint. The Complainant was concerned about the fact that the Registrant said he was planning on using left over hospital towels to wash his car, and was singing during or after eye surgery performed by the Registrant on the Complainant.

II BACKGROUND

[2] The Complainant received right eye surgery performed by the Registrant at a hospital on May 20, 2011.

[3] The Complainant sent a letter of complaint to the College dated May 30, 2011 regarding certain conduct of the Registrant during or after the surgery concerning planned usage of some left over hospital towels to wash a car, and the presence of music or singing.

[4] The Registrar for the College dismissed the complaint as requiring no further action under s.32(3) of the Act and reported this dismissal to the Complainant by letter dated March 6, 2012.

[5] The Complainant, by letter dated March 21, 2012, brought an application for review by the Review Board of the College's dismissal.

[6] The College provided the record to the Review Board by letter dated June 18, 2012.

[7] By letter dated June 19, 2012 the College brought an application for summary dismissal under s.31(1) of the *Administrative Tribunals Act* (the "ATA").

[8] By letter dated June 22, 2012 to the Complainant and the Registrant the Review Board notified the parties of receipt of the summary dismissal application and extended until no later than 4:30 p.m. July 9, 2012 to the Complainant and Registrant to deliver written submissions regarding the summary dismissal application to the Review Board and other parties.

[9] No written submissions were received by the Review Board from the Complainant or Registrant regarding the summary dismissal application.

III DISCUSSION

[10] S.31(1) of the ATA states:

At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

- (a) the application is not within the jurisdiction of the tribunal;
- (b) the application was not filed within the applicable time limit;
- (c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the application was made in bad faith or filed for an improper purpose or motive;
- (e) the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect the application will succeed;
- (g) the substance of the application has been appropriately dealt with in another proceeding.

[11] The College submits that the Complainant has failed to provide any evidence to suggest the investigation was not adequate or the disposition unreasonable. The College submits the Complainant is questioning the reasonableness of the disposition.

[12] The College submits that the application for review is frivolous, vexatious or trivial or unlikely to succeed.

[13] The College cites the Review Board's Decision No. 2009-HPA-0052(a) Re: The College of Psychologists of British Columbia wherein the Review Board discusses its gatekeeper function of summary dismissal provisions to permit it to "weed out" applications that are unworthy of consideration.

[14] The Complainant says that the Registrant's conduct of singing and talking about taking left over hospital towels home to wash his car while putting a "lense" into his right eye is unacceptable, arrogant, disrespectful and shameful.

[15] As held by the Review Board in Decision No. 2011-HPA-0044(a) at paragraph [24]:

The issues brought forward by the Complainant, although of extreme importance to her, are not of a nature that they need to be heard by a panel of the Review Board. Although not trivial or frivolous to the Complainant there appears to be no serious matter of misconduct by the Registrant that needs to be dealt with nor is there any suggestion that the complaint did not receive appropriate attention of the College.

[16] I would apply the same reasoning as stated above to the issues brought forward by the Complainant in this application for review.

[17] In this application for review it is noted that the College accepted the evidence of the Complainant in reaching its decision. Notwithstanding this accepted evidence the College concluded that no further action was required on the complaint. In my assessment of the evidence on a preliminary basis, I conclude the matter does not warrant the time and expense of a full hearing and there is no reasonable prospect the application will succeed.

[18] I am satisfied the application of the College be allowed on the basis that the application for review is trivial and has no reasonable prospect for success.

IV CONCLUSION

[19] I allow the College's application for summary dismissal and hereby dismiss the Complainant's application for review pursuant to s. 31(1)(c) and (f) of the ATA.

[20] In reaching this decision I have reviewed all the submissions and record though not specifically referred to in this decision.

"David Hobbs"

David A. Hobbs, Panel Chair
Health Professions Review Board

January 29, 2013